

REMARKS

This Amendment responds to the Office Action dated November 25, 2009, in which the Examiner rejected claims 1-11 under 35 U.S.C. § 112, second paragraph and under 35 U.S.C. § 103.

As indicated above, claim 1 has been amended in order to clearly indicate that the resource managing apparatus performs the method claimed. Furthermore, the claim has been amended to clearly indicate that the determined conflict is based upon a comparison. Finally, Applicants respectfully point out that the criteria for granting permission is based upon priority as claimed in claim 2. Applicant respectfully requests the Examiner approves the correction and withdraws the rejection to claims 1-11 under 35 U.S.C. § 112, second paragraph.

Claims 1-11 were rejected under 35 U.S.C. § 103 as being unpatentable over *Sankaranarayanan, et al.* (U.S. Patent No. 7,137,119) in view of *Nemirovsky, et al.* (U.S. Publication No. 2006/0218556).

Applicant respectfully traverses the Examiner's rejection of the claims under 35 U.S.C. § 103. The claims have been reviewed in light of the Office Action, and for reasons which will be set forth below, Applicant respectfully requests the Examiner withdraws the rejection to the claims and allows the claims to issue.

Applicant respectfully points out that *Nemirovsky, et al.* is not a proper reference. In particular, the Examiner relied upon paragraph 6 of *Nemirovsky, et al.* Applicant respectfully points out that *Nemirovsky, et al.* is a continuation-in-part of application serial no. 10/254,377 and three provisional applications. Upon review of the parent application and the three provisional applications, Applicant respectfully points out that paragraphs 1-7 and 654-715 along with figures 50-58 of *Nemirovsky, et al.* can only claim priority from the May 17, 2005 filing

date. Since the Examiner is relying upon paragraph 6, having a filing date of May 17, 2005, Applicant respectfully submit that *Nemirovsky, et al.* is not a proper reference since the priority date of the present application is June 10, 2003. Attached to this Amendment is a certified translation of the priority date in order to perfect Applicant's claim to priority. Since *Nemirovsky, et al.* is not a proper reference, Applicant respectfully requests the Examiner withdraws the rejection to claims 1-11 under 35 U.S.C. § 103.

The prior art of record, which is not relied upon, is acknowledged. The reference taken singularly or in combination does not anticipate or make obvious the claimed invention.

Thus it now appears that the application is in condition for reconsideration and allowance. Reconsideration and allowance at an early date are respectfully requested.

CONCLUSION

If for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is requested to contact, by telephone, the Applicant's undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this case.

In the event that this paper is not timely filed within the currently set shortened statutory period, Applicant respectfully petitions for an appropriate extension of time. The fees for such extension of time may be charged to Deposit Account No. 50-0320.

In the event that any additional fees are due with this paper, please charge our Deposit Account No. 50-0320.

Respectfully submitted,

FROMMERM LAWRENCE & HAUG LLP

Date: February 23, 2010
By: 
Ellen Marcie Emas
Reg. No. 32,131
(202) 292-1530